

40. (Withdrawn) The method of claim 32, wherein said thiol-containing compound is N-acetylcysteine or lipoic acid.

REMARKS

*Further Election of Restriction Requirement* - In the Office Action dated 03/11/08, the Examiner has requested that the claimed invention be further restricted under 35 U.S.C. §121. The Examiner states, "Applicants' amendments to the claims have changed the scope of the invention, thus necessitating a new restriction requirement."

The action further states, "This application contains claims directed to the following patentably distinct species:

- 1) a single disclosed thiol-containing compound, for example N-acetylcysteine.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record."

The Examiner continues, "There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g. searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph."

*Applicants elect a single, disclosed thiol-containing compound* - In reply to Examiner's current request, Applicants hereby elect, with traverse, the subject matter of a

single disclosed thiol-containing compound, for example N-acetylcysteine and the single disclosed species of the triglyceride of conjugated linoleic acid as described in pending Claims 21 through 24 and 32 through 35.

However, reconsideration of the restriction requirement is requested on the grounds that the amendments have not changed the scope of the previously elected invention. Applicants contend the original elected restriction to Group V drawn to a method of treating, preventing, or normalizing fat maldistribution resulting from anti-retroviral treatment of HIV-1 infection in a subject by administering a composition comprising a conjugated fatty acid and a **thiol-containing compound**, classified in 436/86 continue to encompasses the art of the newly amended and restricted Claims 21 and 32 and do so more accurately than previously unamended Claims. US Patent Subclass 436/86 is defined as: "Subject matter in which the chemical specie subject to qualitative or quantitative chemical analysis is an (1) amino acid, (2) two or more amino acids residues linked by a peptide bond, (i.e., amide linkage) or (3) a compound containing both peptide and saccharide moieties." As amended the Claims 21 and 32 now read only upon thiol-containing amino acids, whereas previously written Claims 21, 28-29, 32 and 39-40 also read upon compounds that were not **thiol-containing** or amino acids.

*Applicants' amendments have not changed the elected scope of the invention -* In Applicants' response dated 2/7/07, the Applicants elected, with traverse, the subject matter of Examiner's Group V containing Claims 21 (in part), 22-26, 28-29, 32 (in part), 33-37, 39-40 drawn to a method of treating, preventing, or normalizing fat maldistribution resulting from anti-retroviral treatment of HIV-1 infection in a subject by

administering a composition comprising a conjugated fatty acid and a **thiol-containing compound**, classified in 436/86. As further required, Applicants elected the single disclosed species of the triglyceride of conjugated linoleic acid.

Applicants agree with the Examiner that the amended claims change the scope of the invention, but disagree that the newly amended claims necessitate a new restriction requirement or incur an additional search burden. Moreover, Applicants contend that since N-acetylcysteine is a **thiol-containing amino acid** as defined in the previously elected Subclass 436/86, there is no further examination and search burden resulting from the amendments (e.g. the species does require a different field of search employing different search queries). In fact, the Claims 21 and 32 as currently amended are more accurately defined in Subclass 436/86, since lipoic acid is **neither a thiol-containing compound nor an amino acid** and therefore is not a member of the previously elected Subclass 436/86. Additionally, the compounds methionine, N-acetyl methionine, taurine, L-2-oxothiazolidine-4-carboxylate, and N,N'-diacetyl-L-cystine of withdrawn Claims 28 and 39 are not **thiol-containing compounds**. Further, L-2-oxothiazolidine-4-carboxylate is **not an amino acid**. Thus, only those characteristics of the Claims that were in variance with the single, disclosed thiol-containing, amino acid N-acetylcysteine and did not fall within the previously elected Group V Subclass 436/86 have been removed by amendments. Since the Claims as amended do not require a different field of search, no additional examination and search burden exists.

## CONCLUSION

Applicants hereby elect, with traverse, the subject matter of a single disclosed thiol-containing compound, for example N-acetylcysteine and the single disclosed species of the triglyceride of conjugated linoleic acid as described in pending Claims 21 through 24 and 32 through 35. Applicants contend, however, that since N-acetylcysteine is a thiol-containing amino acid as covered in the previously elected Subclass 436/86, there is no further examination and search burden resulting from the amendments (e.g. the species does require a different field of search employing different search queries). Furthermore, as lipoic acid is neither a thiol-containing compound nor an amino acid and the compounds methionine, N-acetyl methionine, taurine, L-2-oxothiazolidine-4-carboxylate, and N,N'-diacetyl-L-cystine are not thiol-containing compounds, the currently amended Claims are more consistent with the elected restriction to thiol-containing compounds of Subclass 436/86.

Therefore, the Applicants respectfully request reconsideration in this matter, withdrawal of this requirement and approval of the currently pending Claims.

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Respectfully submitted,

**BIONEXUS**



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